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Before The
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Advanced Television Systems
and Their Impact upon the
Existing Television Broadcast
Service

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MM Docket No. 87-268

To: The Commission

PETITION FOR RECONSIDERATION
SUBMITTED BY AK MEDIA GROUP, INC.

AK MEDIA GROUP, INC.

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INTRODUCTION

AK Media Group, Inc. ("AK Media"), licensee of television station KFTY(TV) ("KFTY"), Channel 50, Santa Rosa, California, by its attorneys, hereby submits its Petition for Reconsideration in the above-captioned proceeding.

On April 21, 1997, the Commission announced its final Table of Allotments (the "Table") for digital television ("DTV").¹ The Table allots DTV Channel 54 to KFTY. Channel 54 lies outside the core spectrum (the "core"), as the core was defined for the purpose of developing the Table. As more fully explained below, this DTV channel allotment puts KFTY at a distinct economic disadvantage in one of the largest and most competitive markets in the nation. Not only will KFTY be forced to develop its DTV service on a channel it will not be able to keep, but also, depending on the Commission's ultimate definition of the core, KFTY may not be able to move its DTV operations to its current NTSC channel (Channel 50), which would completely deprive the station of its "brand identity." The fact that KFTY is placed in a situation where it does not -- and cannot -- know what its ultimate channel assignment will be makes it virtually impossible for KFTY to engage in rational planning for its DTV future.

¹ In re *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Apr. 21, 1997 (hereinafter "*DTV Sixth Report and Order*").

Therefore, AK Media asks the Commission to reconsider the *Sixth Report and Order* as it applies to KFTY and to reallocate to KFTY a DTV channel that will be permanently within the core. Alternatively, AK Media requests the Commission to require stations which have both a DTV and NTSC channel within the range of channels 7-46 (the “essential core”) to choose now the channel they intend to keep following the transition period, so that stations like KFTY, which have been disadvantaged by their DTV allotments, may also determine their ultimate destination now.

AK Media also requests that the Commission reconsider its stated plan to address the subject of compensation to displaced or relocated operations from channels 60-69,² and to broaden the scope of that inquiry to include compensation for all stations required to establish their DTV service outside the core and then to move that established service inside the core by 2006.

I. KFTY HAS BEEN DISADVANTAGED IN ONE OF THE MOST COMPETITIVE DMAs IN THE NATION

KFTY is in the San Francisco-Oakland-San Jose designated market area (“DMA”), which is ranked 5th in the nation. There are sixteen commercial television stations within this market, and competition is fierce--for programming, for advertising, for revenue and for viewers. The technical and economic challenges faced by stations in the transition to DTV will have a direct impact upon the contours of this competitive landscape. For example, KFTY is currently the only station within this DMA that offers local news and information tailored to the residents of the North Bay. However, unbuilt station KWOK in Novato, California, which holds only a construction permit for NTSC Channel 68, has been granted DTV Channel 47 along with more than twice the maximum power, more than one and one-half times the coverage area, and almost nine times the population coverage of KFTY’s allotment. The new DTV rules provide stations in KWOK’s position with little or no incentive to build analog facilities. KFTY, therefore, with its established record of serving the public interest through local programming to the North Bay, is likely to be faced with stiff competition from a station which has never broadcast from an analog channel and is, therefore,

² *DTV Sixth Report and Order*, at ¶ 80.

essentially in the same position as a new entrant with no record of public service, rather than an existing broadcaster with such a record which is entitled to an initial DTV channel. Meanwhile, KFTY's present DTV allotment requires KFTY to incur the expense and possible loss of identity inherent in its eventual move to a core channel; moreover, KFTY is burdened by a potentially crippling uncertainty concerning its ultimate DTV channel home. The loss of competitive standing will have a negative impact on all of KFTY's existing operations, including its public interest program offerings.

A. KFTY Is Disadvantaged Because Its Allotted DTV Channel Is Outside the Core

The Table was developed using an interim core consisting of channels 2-51. The Commission has not decided how the final core will be defined, but has stated that it may encompass either channels 2-46 or channels 7-51.³

Each allotment in the Table pairs a DTV channel with an existing broadcaster's present NTSC channel. As broadcasters complete the transition from analog to digital television, they will be required to surrender one (or, in relatively few cases, both) of their paired channels, so that all DTV operations will be on channels within the core when the transition period ends in 2006.

Under either of the two definitions presently contemplated by the Commission, KFTY's allotted DTV Channel 54 lies outside of the core.⁴ This means that KFTY will have to develop its DTV operations at Channel 54 and then move its developed (or still developing) DTV operations to a channel within the core by 2006.

³ *DTV Sixth Report and Order*, at ¶ 83.

⁴ The Commission tentatively allotted DTV Channel 41 to KFTY in the draft table of allotments that was included in the Commission's *Sixth Further Notice of Proposed Rulemaking*, released earlier in this proceeding. The Commission estimated that the amount of new interference to KFTY at DTV Channel 41 would be 5.9% in the service area and 12.1% to the population. These levels of interference exceeded the projected new interference levels for 98.7% of all other DTV allotments. Therefore, on January 24, 1997, AK Media filed reply comments requesting that the Commission reduce the effective radiated power (ERP) and/or the antenna height above average terrain (HAAT) for the two stations whose DTV allotments would have caused KFTY's additional interference. Instead, the Commission re-assigned KFTY's DTV channel.

Moving a station's broadcast operations to a new channel entails direct economic costs. If the new channel is only a few channels away (for example, a move from Channel 34 to Channel 36), existing equipment sometimes can be recalibrated to accommodate minor changes, depending on the type of equipment and the manufacturer involved. However, recalibration can mean up to two days' time off the air. At current revenue figures of \$15,000 per day, even this "cheap" solution, if it is available at all, could cost as much as \$30,000. If the move required is more than a few channels away from the original channel, however, new equipment will be required.

If the Commission determines that the core channels will be channels 2-46, then KFTY, having established its DTV service at Channel 54, will be faced with a move of at least eight (8) channels in order to operate within the core spectrum by 2006. A move of this magnitude almost inevitably will subject AK Media to substantial equipment costs that most of its competitors will not have to bear. Harris Corporation, a leading provider of broadcast transmission equipment, estimates that the cost of a move from outside the core to inside the core can be as high as \$25,000.

Economic burdens in a fiercely competitive market can have harsh consequences. So, too, can a broadcaster's loss of station identity. KFTY has spent hundreds of thousands of dollars over the past decade cultivating the association between the station's call letters and its channel number, Channel 50. If the Commission determines that the core spectrum will encompass channels 7-51, KFTY will have to expend more funds in re-associating its DTV services (which will have been provided on KFTY's DTV Channel 54 throughout most if not all of the nine-year transition period) with Channel 50 (KFTY's former NTSC channel). If the core spectrum is defined at channels 2-46, however, KFTY will lose its channel identity altogether and will have to move to a third channel with which it has no identification whatsoever, making the move still more expensive.

Most of KFTY's competitors are not disadvantaged in this way. For example, KPST, in Vallejo, California, is a station that overlaps KFTY's predicted Grade A coverage contour. KPST has an NTSC channel assignment of 66 and has been allotted DTV Channel 30. During and after the transition, KFTY will be competing with KPST for viewers. If KFTY is required to move into

the core in 2006, however, those viewers will have had as many as nine years' worth of viewing experience with KPST at Channel 30; KPST will (indeed, must) keep Channel 30 because it is squarely within the core, while its NTSC channel is outside the core. Thus, KPST will retain all of the concomitant benefits of public awareness and familiarity that flow from remaining at Channel 30, while KFTY struggles to re-establish its identity on a new DTV channel.

KPST is not the only station in the DMA that will receive this customer relations windfall. In fact, if the core channels as ultimately determined span channels 7-51, all but five of KFTY's competitors will have the advantage of continuous DTV operation on the same channel from the inception of their service into the post-transition period.⁵ If the core channels encompass channels 2-46, all but six of KFTY's competitors will have the same advantage.

B. KFTY is Disadvantaged by the Uncertainty of Where It Will Have to Move

The fact that the precise boundaries of the core have not yet been drawn also creates an advantage for one group of stations and a distinct disadvantage for another. Stations whose managers know today from which channel they will be broadcasting in 2006 can begin planning today for their eventual move, or to fully develop community recognition of their DTV channel. Stations like KFTY, whose NTSC channel is in one of the "grey areas" (stations 2-6 and 47-51) that may or may not be within the core as it is eventually defined and whose DTV channel is outside the core, cannot plan for either eventuality. According to the *DTV Sixth Report and Order*, stations with one channel outside the core and one channel inside the core will have to relinquish the non-core station and operate their DTV services from the channel inside the core.⁶ If a station has neither an NTSC nor a DTV channel inside the core, a new channel will be assigned from recovered spectrum.⁷

⁵ Among these competitors will be unbuilt station KWOK in Novato, discussed *supra* text at 2-3.

⁶ *DTV Sixth Report and Order* at ¶84.

⁷ Out of roughly 1900 channel allotments, there are 68 such instances of total displacement
(continued...)

KFTY, in other words, *either* will *have* to move its DTV operations to Channel 50 under one definition of the core, *or* will *have* to move elsewhere--to an unspecified location when that location becomes available at an unspecified time in the future--under the other definition. Until the core is defined, KFTY's management--despite the knowledge that a move is coming--cannot plan. Most of KFTY's competitors, on the other hand, are not held in this kind of limbo⁸ and can plan for the future, secure in the knowledge of the channel assignments of their stations in 2006 and beyond.

II. THE COMMISSION SHOULD ALLOT KFTY A NEW DTV CHANNEL PERMANENTLY WITHIN THE CORE NOW, OR, IN THE ALTERNATIVE, PERMIT KFTY AND OTHER SIMILARLY DISADVANTAGED STATIONS TO SELECT THEIR ULTIMATE DESTINATIONS NOW

The Commission has acknowledged that a small number of stations nationwide have neither a DTV nor an NTSC channel within the core.⁹ The Commission also has pointed out that there are many stations with both an NTSC channel and a DTV channel inside the core, and that these stations will be able to choose which channel they wish to keep. In practical terms, this means that those stations afforded a choice by the Table will be able to use that choice to competitive advantage, not only by choosing the channel which will be the most advantageous to them within their respective markets, but also by waiting to make that choice known, prolonging the uncertainty (and attendant costs) for their disadvantaged competitors. This situation means that stations that were disadvantaged at the beginning of the DTV allotment process will be doubly disadvantaged at the end: they will not be able to prepare budgets or marketing plans or to make equipment purchases until their competitors decide to reveal the "available spectrum" to which they will be required to

⁷(...continued)

nationwide assuming a core of channels 7-51, and 89 instances nationwide assuming a core of channels 2-46. *DTV Sixth Report and Order*, at ¶ 84, 207.

⁸ Of the sixteen commercial full-power television stations in the San Francisco-Oakland-San Jose DMA, only four are caught in this competitive disadvantage.

⁹ *Id.* at ¶ 83.

move, nor will they be able to predict the interference they will either cause or receive at their competitors' "leftover" locations.

This situation is unfair and unreasonable. KFTY, therefore, requests that the Commission reconsider its Table of Allotments with respect to KFTY, and that the Commission allot a DTV channel to KFTY that is within the essential core of channels 7-46 now.

Alternatively, AK Media requests that the Commission permit stations that have been placed at a disadvantage by their DTV allotments to choose their ultimate destination now. This can be accomplished by requiring stations that have both an NTSC and a DTV channel within the essential core to choose now whether they want to keep their DTV allotment or move their DTV operations to their present NTSC channel by 2006. In the San Francisco-Oakland-San Jose DMA, this would "free up" seven permanent core channels for the four stations that cannot now determine where they ultimately will be required to move.

Further, in view of the harsh economic consequences that an allotment outside the core imposes on stations like KFTY, AK Media requests that the Commission reconsider its decision to determine in a future proceeding whether stations forced to develop DTV services outside the core should be compensated for their required move into the core, and how such compensation should be structured. Specifically, we ask the Commission to broaden the scope of the inquiry to include not only channels 60-69, but all channels burdened by a required move. We also suggest that compensation be paid at the time of a station's move. This will act as an incentive for those stations required to move to establish their permanent DTV operations as early as possible, well in advance of the 2006 date certain, rather than to wait to be "bumped."

CONCLUSION

KFTY has been disadvantaged by its DTV allotment relative to its competitors' allotments in one of the most competitive DMAs in the nation. First, the station has been disadvantaged by a DTV allotment that lies outside the core. Being outside the core means that a station will be required to suffer economic disruption while its competitors are gaining strength. Second, KFTY has been

disadvantaged by the uncertainty of not knowing where its ultimate DTV channel will be. The first problem can be alleviated through compensation for all stations that are required to incur the expense of a move into the core by 2006--not just for those stations operating in channels 60-69. The second problem can be resolved by re-allotting a DTV channel to KFTY now which is within the core channels 7-46. Alternatively, the second problem can be resolved by requiring the "fortunate" broadcasters--those with both an NTSC and DTV channel within the core--to choose now the channel they wish to retain after the transition from analog to digital television, so that the "unfortunate" broadcasters--those who cannot determine now where their ultimate channel assignment will be--can make meaningful plans for the development of their DTV services.

Accordingly, for the reasons set forth above, AK Media respectfully requests that the Commission grant the relief requested herein.

Respectfully submitted,

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June 13, 1997

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CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that on June 13, 1997, true copies of the foregoing "Petition for Reconsideration" were hand delivered to the following:

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